

RIGHT OF ENTRY AGREEMENT

30192

LICENSEE: SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
 ADDRESS: 21865 COPLEY DRIVE  
 DIAMOND BAR, CALIFORNIA 91765  
 CONTACT: ATMOSPHERIC MEASUREMENTS MANAGER  
 TELEPHONE: (909) 396-2136  
 FAX: (909) 396-3657

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into, in duplicate, as of February 16, 2007, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting of October 24, 2006, and Licensee.

1. City hereby grants permission to Licensee and its duly authorized representatives to enter the site shown on Exhibit "A" attached hereto and incorporated herein (the "Site") for installation, maintenance and monitoring of a detection device for aerosolized biological agents and similar air monitoring equipment. The Site shall not be used for any other purpose.

2. The term of this Agreement shall commence upon the date executed by the City Manager of City and expire upon removal of all the equipment, unless earlier terminated under Section 7 below. Licensee's obligations relating to or arising out of this Agreement shall survive termination or expiration of this Agreement.

3. Licensee shall notify City and obtain City's approval before adding any equipment or making any modifications to

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1 the Site. Licensee shall obtain all necessary permits for its  
2 activities at the Site. During its use of and entry upon the Site,  
3 Licensee shall at all times comply with all laws, ordinances,  
4 rules, and regulations of all federal, state, and local  
5 governmental authorities having jurisdiction over the Site and  
6 Licensee's activities thereon ("Laws").

7           4. Licensee shall defend, indemnify, hold, protect and  
8 save harmless the City of Long Beach and its officials,  
9 commissioners, employees, and agents ("Indemnified Parties") from  
10 and against any and all actions, suits, proceedings, claims,  
11 demands, damages, losses, liens, costs, expenses or liabilities, of  
12 any kind or nature whatsoever ("claims") which may be brought,  
13 made, filed against, imposed upon or sustained by the indemnified  
14 parties, or any of them, alleging any connection with this  
15 Agreement or activities described in this Agreement. City shall  
16 notify Licensee of any such claim, shall tender its defense to  
17 Licensee, and assist Licensee, as may be reasonably requested, in  
18 such defense. Upon such notification and tender, Licensee shall  
19 have independent duties to defend such claim, and to indemnify the  
20 indemnified parties except to the extent that injury, death or  
21 property damage is determined by a court of competent jurisdiction  
22 to have been caused by the negligence or willful misconduct of the  
23 indemnified parties or any of them. Payment of a claim shall not  
24 be a condition precedent to an Indemnified Party's right to defense  
25 and indemnity.

26           5. City shall have no duty to make any improvement or  
27 repair to the Site or the improvements thereon. Licensee's sole  
28 and exclusive remedy by reason of any condition of the Site

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1 (whether such condition now or hereafter exists) shall be the  
2 termination of this Agreement and vacation of the Site. Licensee  
3 waives any claim for damages against City or its officers,  
4 employees, commissioners, elected officials, and agents for breach  
5 of this Agreement. Any and all uses of the Site by Licensee, its  
6 agents, contractors, and their employees shall be at their sole  
7 cost and expense.

8 6. Licensee shall not assign this Agreement or any  
9 interest herein nor allow the transfer thereof whether by operation  
10 of law or otherwise. Any attempted transfer or assignment shall be  
11 void and confer no right whatsoever upon a transferee or assignee.

12 7. Either party may terminate this Agreement without  
13 cause upon 30 days notice. If Licensee fails or refuses to perform  
14 any term, covenant or condition within three days of notice from  
15 City, City may terminate this Agreement without further notice.

16 8. Any notices to be given under this Agreement shall  
17 be given in writing. Such notices may be served by personal  
18 delivery, facsimile transmission or by first class regular mail,  
19 postage prepaid. Any such notice, when served by mail, shall be  
20 effective two (2) calendar days after the date of mailing of the  
21 same, and when served by facsimile transmission or personal  
22 delivery shall be effective upon receipt. For the purposes hereof,  
23 the address of City, and the proper person to receive any such  
24 notices on its behalf, is: City Manager, City of Long Beach, 333 W.  
25 Ocean Blvd., 13<sup>th</sup> Floor, Long Beach, California 90802; and the  
26 address and FAX number of Licensee as indicated above.

27 9. Time is of the essence with respect to the  
28 performance of every provision of this Agreement in which time or

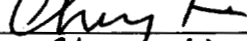
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1 performance is a factor.

2 10. If there is any legal proceeding between the parties  
3 to enforce or interpret this Agreement or to protect or establish  
4 any rights or remedies hereunder, each party shall be bear its own  
5 costs and expenses.

6 SOUTH COAST AIR QUALITY MANAGEMENT  
7 DISTRICT, regional air pollution  
8 control district


9 Feb 6, 2007

By:   
Name: Chung Liu  
Title: DEO/STA

11 LICENSEE

12 CITY OF LONG BEACH, a municipal  
13 corporation

14 2.20, 2007

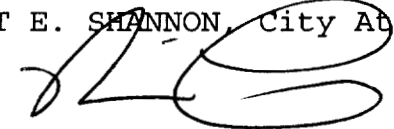
By:   
Gerald R. Miller,  
City Manager

16 CITY

17 The foregoing document is hereby approved as to form.

18 ROBERT E. SHANNON, City Attorney

19 2/13, 2007

By:   
Richard F. Anthony,  
Deputy

21 The foregoing document is hereby approved as to form.

22 KURT WIESE, DISTRICT COUNSEL

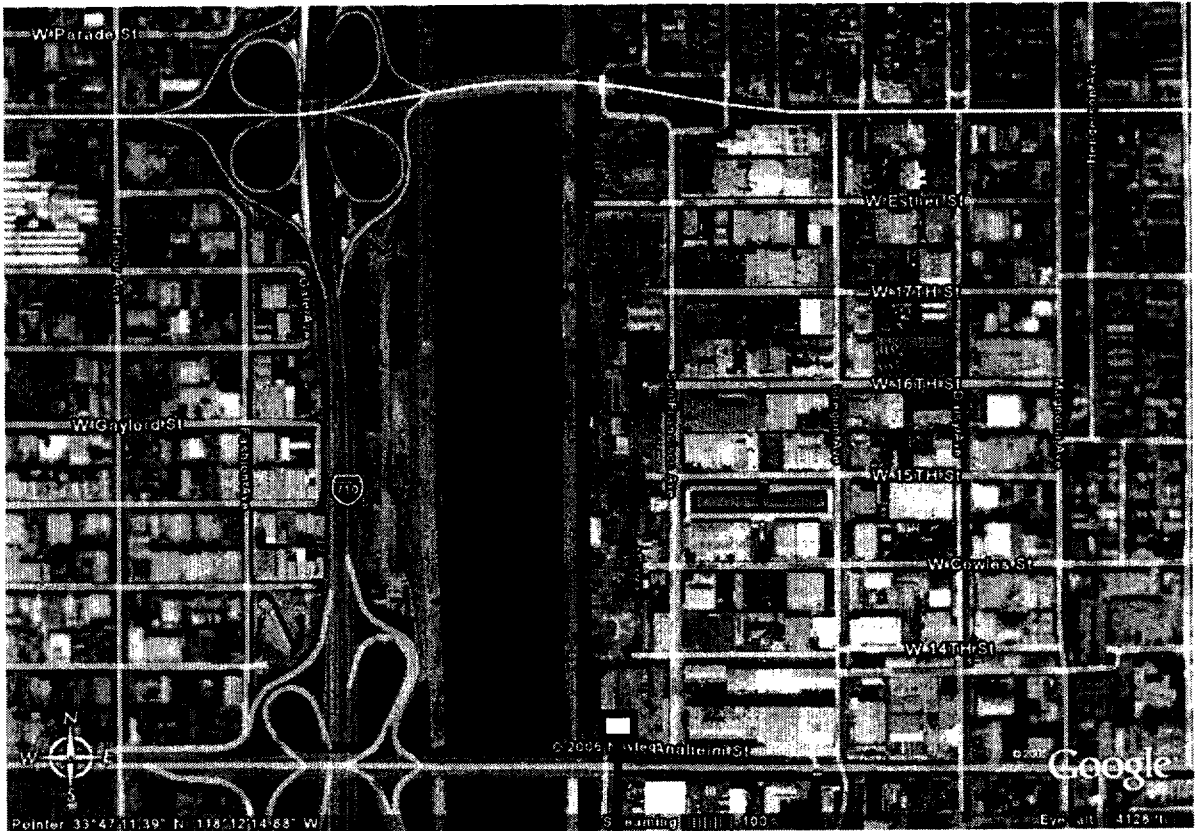
23 February 6, 2007

By:   
SENIOR DEPUTY

25 RFA:ac 01/22/07 #06-05135

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# EXHIBIT A



Approximate location of 50 X 150 foot site at the former Tow Yard in the Public Service Yard at 901 W. Anaheim Street